HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION Nos.8861, 8866, 8967, 8968 AND 8974 OF 2007

WRIT PETITION No. 8861 OF 2007

Between:

K.V. Rao

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 8866 OF 2007

Between:

K.L.N. Raju

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 8967 OF 2007

Between:

Vinod Rao Banja

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 8968 OF 2007

Between:

K.B. Sudershan

…Petitioner

AND

The Malkajgiri Municipality,
Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

WRIT PETITION No. 8974 OF 2007

Between:

Smt. Uma Augustine Jairaj

…Petitioner

AND

The Malkajgiri Municipality,

Rep., by its Commissioner,
Malkajgiri, Ranga Reddy District
and two others

...Respondents

: COMMON ORDER :

Counsel for the petitioners : Shri D. Prakash Reddy,

Senior Advocate assisted by
Shri Harender
Pershad

Counsel for respondent No.1 : Shri P. Radhakrishna

Counsel for respondent No.2 : Shri G. Vidyasagar

Counsel for respondent No.3 : Smt. Kalpana Ekbote

July 17, 2007

Per G.S.SINGHVI, CJ

The above noted writ petitions have been filed by the purchasers/occupiers of building known as Rainbow Complex for quashing final notices dated 15-2-2007 issued by Commissioner, Malkajgiri Municipality, Ranga Reddy District for removing the alleged setback violations.

The prayer of the petitioners is founded on the assertion that at the time of purchase of different portions of Rainbow Complex from its owner and builder Shri K.V. Satish (respondent No.2 herein), they did not know of any setback violation. According to them, the builder constructed the apartments on Plot Nos. 291 and 291/A, Survey No. 218/1 of Defence Colony, Malkajgiri Municipality (for short, 'the Municipality') and they purchased different portions under registered sale deeds; that even though the impugned notice makes a reference to provisional order dated 28-2-2004 issued under Sections 228 (1) and (2) of Andhra Pradesh Municipalities Act, 1965 (for short, 'the Act') and confirmation order dated 6-8-2004 issued under Section 228 (3) of the Act, no show cause notice and opportunity of hearing was given to them; that the alleged violations made by the builder are within the permissible limits and that they cannot be deprived of their property without following the procedure established by law and without

complying with the rules of natural justice.

In the counter-affidavit filed by him, Shri D. John Samson, Commissioner, Malkajgiri Municipality has averred as under:

(i) that, respondent No.2 Shri K.V. Satish applied for permission for construction of apartments in Plot Nos. 291 and 291/A, Survey No. 218/1, Defence Colony;

(ii) that Hyderabad Urban Development Authority granted technical approval for ground + four floors vide permission No. 7540/P4/H/2003, dated 27-10-2003 and the plans were released by the Municipality vide proceedings No. G2/1021/2003, dated 8-12-2003 for the construction of residential apartments;

(iii) that provisional order dated 28-2-2004 was issued under Section 228 (1) and (2) of the Act and confirmation order dated 6-8-2004 was issued under Section 228 (3) of the Act requiring the builder to remove the violations;

(iv) that provisional order was issued to the builder, but he builder did not respond to the notice and, therefore, confirmation order was issued on 6-8-2004.

According to Shri Samson, the petitioners had purchased apartments after issue of confirmation order under Section 228 (3) of the Act and, therefore, it was not necessary to issue notices to them.

In paragraphs 6 and 7 of the counter affidavit filed by him, the builder Shri K.V. Satish has averred as under:

> "6. I submit that even the impugned notice issued by the 1st respondent does not contain or specify as to the measurements or particulars of alleged deviations. Thus the notice so issued by the 1st respondent is vague and without following the procedure laid down under the Act.
>
> 7. I submit that I made construction in pursuance to the approvals by the 1st respondent only and if any minute, negligible deviations are caused it would be absolutely with the knowledge, notice of land owner who may be the petitioner or her/his predecessor. Therefore the petitioner can not lay any claim of socalled damages more particularly in the shape of this writ petition. As such the allegation against me particularly claiming damages or otherwise

is incorrect and hence denied. It is further respectfully submitted that my land owners had obtained permission and approval from the 1st respondent in due process for construction of 15 residential flats/units under five floors. Thus I have constructed only 15 flats comprising into 5 floors wherein each floor consist of three residential flats. Therefore absolutely there is no deviation by constructing additional floors or additional flats or whatsoever."

We have heard learned counsel for the parties and carefully scrutinized the record. The notice issued to one of the petitioners, namely, Shri K.V. Rao (petitioner in Writ Petition No.8861 of 2007) reads as under:

"**OFFICE OF THE MUNICIPAL COUNCIL MALKAJGIRI**
RANGA REDDY DISTRICT

FINAL NOTICE

Lr.No.G2/226/2005 **Dt.15.02.2007**

Sub: Malkajgiri Municipality – Illegal Constructions in Defence Colony-W.P.879 of 2005 on the file of Hon'ble High Court filed by O.Yella Reddy – Notice issued as per the orders of Hon'ble High Court – regarding.

Ref: 1. This Office Provisional Order, dated 28-2-2004 issued under section 228 (1) & (2) of APM Act 1965.
2. This Office Confirmation Order, dated 6-8-2004 issued under section 228 (3) of APM Act, 1965.
3. Judgment of Hon'ble High Court in W.P.No.879 of 2005, dated: 22-01-2007.

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Please take notice that, you have constructed residential apartments in Plot Nos. 291 & 291/A, Sy.No.218/1 of Defence Colony Malkajgiri by deviating to the Technically approved plan by HUDA vide Lr.No.7540/P4/H/2003, Dt.27-10-2003 and this office Proceedings No. G2/1021/2003, dt. 5-12-2003 i.e. set back violations.

As per the Judgment of the Hon'ble High Court in W.P.No.879 of 2005, you are hereby directed to remove the set back violations voluntarily within a period of one month from the date of receipt of this notice, failing which the same violations will be removed departmentally.

Commissioner
Malkajgiri Municipality

To
Sri K.L.N. Raju, Flat No. 201, 202, 503,
Plot No.291 & 291/A, Viniyard Rainbow Appt.,
Sy.No.218/1,
Defence Colony,

Malkajgiri."

In the context of the statement contained in the above reproduced notice and the averments contained in the affidavit of respondent No.2, we asked Shri P. Radhakrishna, learned counsel for the Municipality to show that provisional and confirmation orders passed on 28-2-2004 and 6-8-2004 respectively were served on the said respondent in accordance with Section 353 of the Act. In reply, learned counsel fairly stated that the records made available to him do not show that either of the two orders was tendered to respondent No.2 or that the alternative mode was adopted, because respondent No.2 was not found at the given address.

In view of the statement made by the learned counsel for the Municipality, there is no escape from the conclusion that notice had not been served on respondent No.2. Section 353 of the Act, which prescribes method of serving documents etc., reads as under:

> "**353. Method of serving documents :--** (1) When any notice, or other documents is required by this Act or by any rule, bye-law, regulation or order made under it, is to be served on or sent to any person, the service or sending thereof may be effected—
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> (a) by giving or tendering the said document to such person; or
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> (b) if such person is not found, by leaving such document at his last known place of abode or business or by giving or tendering the same to some adult member or servant of his family; or
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> (c) if such person does not reside in the municipality and his address elsewhere is known to the Commissioner by sending the same to him by post registered; or
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> (d) if none of the means aforesaid be available, by fixing the same in some conspicuous part of such place of abode or business.
>
> (2) Where the person is an owner or occupier of any building or land, it shall not be necessary to name the owner or occupier in the notice or document, and in the case of joint owners and occupiers it shall be sufficient to serve it on, or sent it to, one of such owners or occupiers.
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> (3) Whenever in any bill, notice, form or other document, served or sent under this Act, a period is fixed within which any tax or other sum is to be paid or any work executed or anything provided, such period shall save as otherwise provided in this Act, be calculated from the date of such service or sending."

A bare reading of the above reproduced provision makes it clear that the notice required to be given under Section 228 (1) and (2) of the Act has to be tendered to the affected person. The alternative mode envisaged in clauses (b), (c) and (d) of sub-section (1) of Section 353 can be resorted to only if the person to whom the notice is addressed is not found or does not reside in the municipality or the notice cannot be served in accordance with clauses (b) or (c).

In the present case, the provisional order issued under Section 228 (1) and (2) and confirmation order issued under Section 228 (3) are not shown to have been tendered to the builder i.e., respondent No. 2. Therefore, the same cannot be treated as served on the said respondent.

As a sequel to the above, it must be held that notices dated 15.2.2007 issued to the petitioners for removing the violations on the assumption that the builder had not done so despite service of provisional and confirmation orders cannot be sustained.

In the result, the writ petitions are allowed and the impugned notices are quashed. However, with a view to avoid unnecessary litigation on the ground of violation of the procedural aspect or the rules of natural justice, we deem it proper to issue the following directions:

1) The petitioners and respondent No.2 will be deemed to have been put on notice regarding violations of the sanctioned plan.

2) Within one month from today, the petitioners and respondent No.2 may submit their written objections/ representations against the proposed removal of violations. They shall submit their representations to Deputy Commissioner, Greater Hyderabad Municipal Corporation, Malkajgiri Circle (this is being done because Malkajgiri Municipality has merged in Greater Hyderabad Municipal

Corporation).

3) Within next six weeks, the competent authority shall hear the petitioners and respondent No.2 or their authorized representatives, wherever a written request for hearing is made, consider the representations/objections and pass speaking orders in the matter of removal of the violations or otherwise.

4) If the competent authority comes to the conclusion that respondent No.2 has not violated the sanctioned plan, then the notices issued to the petitioners and respondent No.2 shall be dropped. If, on the other hand, the competent authority comes to the conclusion that the building has been constructed in violation of the sanctioned plan, then the final order be communicated to the petitioners and respondent No.2 and they be given reasonable time to remove the violations.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

July 17, 2007

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